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Brief of Beecher for Petitioner

Supreme Court

OF THE UNITED STATES.

Filed Jan. 21, 1899.

IN THE MATTER

OF

The Petition of LI SING.

BRIEF.

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The Petition of LI SING.

This is an appeal from an order of the Circuit Court of Appeals of the United States of America for the Second Circuit, filed April 29, 1898, and affirming the action of the Circuit Court for the Southern District of New York which affirmed the action of the U. S. Commissioner in ordering the deportation of the petitioner.

It is conceded that the petitioner had for many years been a resident of Newark, N. J.

In the summer of 1893 he visited China intending to return to this country; for that purpose he procured the customary certificate from the representative of his government, the Chinese Consul, and had the same vised in the usual manner.

When about to return he presented this certificate to the U. S. Consul at Hong Kong, who countersigned the same. He applied for re-admission at the Port of Malone and presented his papers to the U. S. Deputy Collector stationed at that point. After a careful investigation by the Deputy

Collector running over several weeks, he was permitted to re-enter the United States and has remained here since.

He was then arrested on the charge of being unlawfully within the United States, and ordered by the Commissioner to be deported. On review by writs of certiorari and habeas corpus the action of the Commissioner was affirmed, and from such order this appeal is taken.

I.

It must be kept in mind that this proceeding is not based on petitioner's application for leave to re-enter the United States. That question was determined by the Collector at Malone.

That collector acted in his official capacity and represented the government and his action is binding upon the government until reversed.

It must therefore be assumed that petitioner was lawfully and properly admitted to this country. It will be noted that he is not charged with having unlawfully come into this country but with unlawfully remaining here. If he was admitted by the act and consent of the United States after an investigation which established his right to enter, and if he has remained here relying on that right, then it cannot be said that he is unlawfully remaining here.

II.

It has frequently been decided and can hardly now be questioned that the United States may delegate to certain executive officers the power and the duty of determining whether if a Chinaman apply for admission to this country, he is entitled to enter within its territory.

Where such authority is so delegated it must be plain that the action of said agent is the action of the government and is binding upon it.

The law as it now stands as amended by the Act of 1894, places the power and duty of determining the admissibility of a Chinese applicant exclusively in the hands of the Collector of the Port of Entry.

As was said by the Supreme Court in Lem Moon Sing, 158 U. S., 538-550:

> "We mean only to decide that that ques-
> "tion (the right of entry) has been constitu-
> "tionally committed by Congress to named
> "officers of the Executive Department of the
> "government for final determination."

No claim is made by the Government that any one could pass upon the petitioner's admissibility into this country when he applied for entry, except the Collector.

In other words the Collector's jurisdiction over that question was exclusive.

III.

The Collector at Malone having exclusive jurisdiction to hear and determine the right of petitioner to enter, his determination is conclusive on all matters relating to the question brought before him.

As the law stood when the petitioner was admitted to this country, the Collector alone had power to pass upon his admissibility. Any error committed by him could be reviewed only by the Secretary of the Treasury.

By Sec. 12 of the Act of Sept. 13, 1888, it was enacted:

> "And the Collector shall in person decide
> "all questions in dispute, and his decision
> "shall be subject to review by the Secretary
> "of the Treasury, and not otherwise."

Some doubt has been raised as to how far that Act ever went into effect. The first and last sections are made expressly dependent upon the ratification of a then pending treaty between this and the Chinese governments. But every Court which has considered the subject has held that some parts of the Act became operative.

This statute seems to have been considered first in August of 1891, in the case of

United States vs. Jim, 47 Fed. Rep , 431, the Court saying:

> "It is my opinion, however, that every "part of the Act became effective from the "date of its approval except the particular "provision of the 1st and 15th sections, "which are specially, by the provisions con- "tained therein, made to depend for vitality "upon the contingency of the ratification at "a future time of the pending treaty. The "*other parts of the statute* are not of such a "character as to be necessarily dependent "upon any of the provisions of either the "1st or 15th sections. They can and do fit "into the body of the general laws of this "country, as well without as with the 1st "and 15th sections * * * and contribute "toward making the system complete and "harmonious."

In September, 1891, the same question came up in Vermont in

Re Wah Wong Gee, 47 Fed. Rep., 433, the Court saying:

> "Parts of the act were made to take ef- "fect on the ratification of the treaty, and "*the rest including Sec. 13 providing for* "*an appeal, were made to take effect pres-* "*ently*, and became at once, and are now a "part of the law of the subject."

In November of the same year the question came up again in Michigan, in the case of

United States vs. Chang Sam, 47 Fed. Rep., 878.

Here the Court held that Sections 1, 3, 4 were dependent upon ratification, but that *Sec. 12* was plainly and absolutely an independent measure "equally conducive to the enforcement of the Act "whether the treaty be ratified or not."

In December, 1891, this question came up again in the case of

United States vs. Lee Hay, 48 Fed. Rep., 825.

In that case the facts were very similar to those presented here, after holding that Sec. 12 of the Act of 1888 was in force, the Court applied the principles of *res adjudicata* in the following strong and emphatic language:

> "Every question as to his right to return "has been once passed upon by a representa- "tive of the United States, specially author- "ized, and required to make careful enquiry "as to the facts, and decide such question. "* * * When an officer or special tribunal "is expressly empowered to receive and ex- "amine proofs and decide any question of "fact necessary to be determined in the "course of administration of the govern- "ment or execution of the laws, *and no "power of review is given to the Courts by "statute*, the finding of facts made by such "officer or special tribunal pursuant to such "authority is conclusive upon the parties "affected and upon the Courts, unless it can "be impeached for fraud.
>
> "Upon this principle the Courts are pre- "cluded from re-opening a case once passed

> "upon by such an authorized officer or "special tribunal, for the mere purpose of "inquiring whether or not the decision was "predicated upon legal or sufficient evi- "dence."

This case was afterwards affirmed by the Circuit Court of Appeals, but upon a different line of reasoning, the Court holding that Sec 13 of the act in question was operative, but thought the other sections inoperative—a somewhat inconsistent conclusion. As their decision was put on other grounds, this part of the opinion might properly be considered as *obiter*.

Still later comes the case of United States vs. Long Hop, 55 Fed. Rep., 58. Here the Court holds that *all of the act was in force* except the first three or four sections and Section 15. It followed and adopted the opinion in United States vs. Jim, *supra*.

It is significant that this case came out a year or two later than the decision in the Lee Hoy appeal, and that the Court evidently did not consider the *obiter dictum* of the Circuit Court of Appeals on this question as controlling.

As to conclusiveness of the Collector's action see also

Re Day, 27 Fed. Rep., 678.

The United States having once determined by a legally authorized official that the petitioner was entitled to come into this country cannot now repudiate its own action to the petitioner's detriment, at least until the determination of its own tribunal has been reversed by lawful review. The only method of reviewing the Collector's action is by appeal to the Secretary of the Treasury.

This precise question has already been decided and it has been held that where an alien has once been admitted he cannot be arrested for deporta-

tion, except by the Secretary of the Treasury who must proceed within one year.

R. L. Fieri, 52 Fed. Rep , 293.

The rule invoked here falls plainly within the well known principles of *res adjudicata*.

In the case of U. S. vs. Chung Shee (76 Fed. Rep., 951), the Circuit Court of Appeals held that where the right to enter had once been determined by a tribunal having jurisdiction of the subject matter, such determination was *res adjudicata* and conclusive on the question of *his right to remain*. That it once being determined that a person had the right to enter, such determination would be conclusive on *his right to remain*.

If the government thinks that the petitioner had no right originally to enter this country, then it should review the action of the Collector by an appeal to the Secretary of the Treasury. It cannot attack the action of the Collector collaterally in these independent proceedings.

The Chung She case, which is relied upon by the Government, does not sustain its contention. One of the principal questions there considered was whether the Federal Courts *could review by appeal* the determination of the Collector, and the opinion shows (p. 953) that "An appeal was taken *from said findings and judgment* to the District Court," &c., *that is, the findings and judgment of the Collector*.

It is not contended by the petitioner here that the action of the Collector is so final that it cannot be reviewed, *but that it is final until it is reviewed and reversed or modified*, by the proper reviewing authority.

It certainly cannot be questioned in an independent original proceeding like this. The right to review does not carry with it a right to ignore. If the Government had taken steps to review the action of the Collector in any tribunal of competent

jurisdiction, it would have presented the question which was examined in the Chung Shee case, viz., can the Government review the action and determination of the Collector?

It might be noted that the review of the Collector's decision in Chung Shee's case occurred before the passage of the Act of 1894, and it might be a serious question whether under that Act the sole reviewing tribunal was not the Secretary of the Treasury.

The Loo Way case goes no further than the Chung Shee case; it only determines that the action of the Collector may be reviewed. That proposition is not questioned here because it does not arise.

It can hardly be claimed that the proceeding before the Commissioner in the petitioner's case was in the nature of an appeal from the Collector's decision.

1st. Because there is no power conferred on the Commissioner to sit *as a Court of review*. The Collector's decision can only be reviewed by certiorari to the appropriate appellate tribunal or by appeal to the Secretary of the Treasury.

2d. These proceedings were based upon the charge of being unlawfully within the country. The record shows that there was no notice of appeal or writ of review of any kind.

3d. If these proceedings were in the nature of a review, then the burden should have been on the party appealing to overcome the presumption in favor of the decision. But the Commissioner ruled that the burden was on the petitioner, that is, the respondent was required to establish the legality of the decision from which the other side had appealed. Such a ruling, if the proceedings were in the nature of an appeal, would have been absurd. His ruling was based on Section 3 of Act of 1892, but that clearly relates to original proceedings, and

has nothing to do with proceedings by way of appeal.

It is perfectly plain that the proceedings before the Commissioners were original proceedings and not in the nature of an appeal.

IV.

The ruling of the Commissioner that the burden of proof was cast upon the petitioner was erroneous.

Section 3 of the Act of 1892 purporting to create such a rule relates only to those arrested under the provisions of that act and the act of 1882 as amended in 1884.

That Section is clearly a plain violation of the Constitution. The guarantees and protection of the constitution are just as much for the benefit of an alien as for a citizen.

This precise question, whether the Constitutional provisions would protect an alien Chinaman, was presented in the case of

Wong Wing vs. U. S. (163 U. S., 228-238),

and the Supreme Court said:

> "These provisions are universal in their "application to all persons within the ter- "ritorial jurisdiction without regard to any "difference of race, of color or nationality, "and the equal protection of the laws is a "pledge of equal laws."

See also Yick Wo vs. Hopkins, 118 U. S., 356.

In this case the Supreme Court, after stating the rule as quoted in the Wong Wing case, said:

> "The questions we have to consider and "decide in these cases, therefore, are to be "treated as involving the rights of every

"citizen of the United States, equally with "those of the strangers and aliens who now "invoke the jurisdiction of this Court."

The meanest Chinese alien is entitled to the same rights under the Constitution as the most enlightened citizen of this country.

He is entitled to have the laws construed and enforced in his case with the same equality as a citizen.

The 14th Amendment of the Constitution specifically guarantees the equal protection of the laws.

It was expressly held that a statute which permitted a different rule of law in the case of an alien from that which citizens enjoyed were unconstitutional.

It is the fundamental principle of our law that every man shall be presumed innocent of any charge preferred against him until he shall be proved to be guilty, and a law which presumes that a man of a *particular race* is doing an unlawful act from the mere fact of his nationality without requiring any proof, is a violation of the Constitutional guarantee of equal protection.

Sections 3 and 4 of the Act of 1892 must be read together, as they stand a Chinaman for no other reason than that he is a Chinamen becomes liable to a judgment which exposes him not only to deportation but to imprisonment, not only *without a trial*, but without *any proof being presented*.

It was on these grounds that the Supreme Court declared Section 4 to be unconstitutional.

Wong Wing vs. U. S., *supra*.

But if we disregard Section 4 and consider it as having been expunged, the same criticism applies to Section 3.

The Act of 1892 expressly continues in force the pre-existing statutes. The Act of 1882 and 1884 explains under what circumstances it is unlawful for a Chinaman to enter or remain in this country. Section 16 of Act of 1884 makes every violation of these laws a misdemeanor punishable by fine and imprisonment.

Section 3 of Laws of 1893, as we have seen, declares that any Chinaman arrested under that act or the previous acts shall be adjudged a violator of the laws (and so liable to fine and imprisonment), without a trial, or any proof being presented against him, because unless he takes up the burden of proof he stands convicted by operation of law, so that this section accomplishes the very thing which is so sharply condemned in the Wong Wing case.

V.

That provision of the law that excludes Chinamen as witnesses and requires an applicant to prove his standing as a merchant, by white witnesses only, is violative of the Constitution which guarantees equal rights and equal laws to all.

No law can stand which forbids a man from calling his own countrymen as witnesses; that is creating a new and harsh rule of evidence and confining it to a single race as above.

VI.

This whole system of statutes constitutes a most shameful mockery of justice. They were passed to favor the blind and bitter prejudices of a small section, and ought not to be stretched one iota beyond what their strict construction requires. They

have become a disgrace to our nation, with its much vaunted love of freedom and equality, and this shame ought not to be increased beyond the limit of absolute necessity.

VII.

The order appealed from is wrong and should be reversed.

W. C. BEECHER,
Attorney for Petitioner-Appellant.

Office Supreme Court U. S.
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Brf. of Beecher for Appt.

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New York City.

C. G. Burgoyne, Walker and Centre Streets, N. Y.

Supreme Court of the United States.

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The Petition of LI SING.

This is a review by writ of *certiorari* of the action of the Circuit Court of Appeals of the United States of America for the Second Circuit, filed April 29, 1898, and affirming the action of the Circuit Court for the Southern District of New York, which affirmed the action of the U. S. Commissioner in orde ing the deportation of the petitioner.

It is conceded that the petitioner had for many years prior to 1893 been a resident of Newark, N. J.

In the summer of 1893 he visited China intending to return to this country; for that purpose he procured the customary certificate from the representative of his government, the Chinese Consul, and had the same viséd in the usual manner.

When about to return he presented this certificate to the U. S. Consul at Hong Kong, who countersigned the same. He applied for readmission at the Port of Malone, State of New York, and presented his papers to the U. S. Deputy Collector stationed at that point. After a careful investigation by the Deputy Collector, running over several weeks, on the 27th of August, 1896, he was permitted to re-enter the United States, and has remained here since.

On the 6th of January, 1897, he was arrested on the charge of being unlawfully within the United States, and ordered by the Commissioners to be deported. On review by writs of *certiorari* and *habeas corpus* the action of the Commissioners was affirmed, and from such order this writ of review is taken.

Assignment of Error.

1. That the action of the Collector in admitting the petitioner was *res adjudicata* and conclusive until reversed on proper review.

2. That the Government had no right to institute original proceedings for petitioner's deportation.

3. That the Commissioner erred in rejecting petitioner's testimony.

4. That the certificate presented by the petitioner was valid, and entitled him to enter the United States; that its receipt in evidence for a limited purpose was error.

5. That the provisions of law requiring the petitioner to prove affirmatively his right to enter or remain are unconstitutional and void.

6. That the statutes which prohibit the use of Chinese witnesses, and which require white witnesses, are unconstitutional and void.

7. That the exclusion of the testimony of Chinese witnesses was error.

8. Petitioner was a merchant when he originally departed from this country, and was entitled to return without certificate. It was error to order his deportation.

I.

It must be kept in mind that this proceeding is not based on petitioner's application for leave to re-enter the United States. That question was determined by the Collector at Malone, who admitted him. He returned to his old home in Newark and had been living there some little time when he was arrested and brought before the Commissioner.

That Collector acted in his official capacity and represented the Government, and his action is binding upon the Government until reversed.

It must, therefore, be assumed that petitioner was lawfully and properly admitted to this country. It will be noted that he is not charged with having unlawfully come into this country, but with unlawfully remaining here, and yet the charge is attempted to be sustained by proof that he had improperly come into this country. It being substantially admitted that, if he came in lawfully, he may remain lawfully. If he was admitted by the act and consent of the United States after an investigation which established his right to enter, and if he has remained here relying on that right, it cannot be said that he is unlawfully remaining here.

II.

It has frequently been decided and can hardly now be questioned that the United States may delegate to certain executive officers the power and the duty of determining whether if a Chinaman apply for admission to this country he is entitled to enter within its territory.

Where such authority is so delegated it must be plain that the action of said agent is the action of the Government, and is binding upon it.

The law, as it now stands as amended by the Act of 1894, places the power and duty of determining the admissibility of a Chinese applicant exclusively in the hands of the Collector of the port of entry.

As was said by the Supreme Court in Lem Moon Sing, 158 U. S., 538–550 :

> " We mean only to decide that that question
> " (the right of entry) has been constitutionally
> " committed by Congress to named officers of the
> " Executive Department of the government for
> " final determination."

This Court in the still later case of U. S. vs. Wing Kim Ark (169 U. S., 649, 700), held that the power to exclude or expel was vested in the political departments of the Government, except so far as the Judicial Department was empowered either by statute or treaty.

No claim is made by the Government that any one could pass upon the petitioner's admissibility into this country when he applied for entry, except the Collector.

In other words, the Collector's jurisdiction over that question was exclusive.

III.

The Collector at Malone having exclusive jurisdiction to hear and determine the right of petitioner to enter, his determination is conclusive on all matters relating to the question brought before him.

As the law stood when the petitioner was admitted to this country the Collector alone had power to pass

upon his admissibility. Any error committed by him could be reviewed only by the Secretary of the Treasury.

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This statute seems to have been considered first in August of 1891 in the case of

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> " It is my opinion, however, that every part of " the act became effective from the date of its " approval, except the particular provision of the " 1st and 15th sections, which are specially, by the " provisions contained therein, made to depend for " vitality upon the contingency of the ratification " at a future time of the pending treaty. The " *other parts of the statute* are not of such a char- " acter as to be necessarily dependent upon any of " the provisions of either the 1st or 15th sections. " They can and do fit into the body of the general " laws of this country, as well without as with the " 1st and 15th sections * * * and contribute " toward making the system complete and har- " monious."

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" or execution of the laws, *and no power of review* " *is given to the courts by statue*, the finding of facts " made by such officer or special tribunal pur- " suant to such authority is conclusive upon the " parties affected and upon the courts, unless it " can be impeached for fraud.

" Upon this principle the courts are precluded " from reopening a case once passed upon by such " an authorized officer or special tribunal, for the " mere purpose of inquiring whether or not the " decision was predicated upon legal or sufficient " evidence."

This case was afterwards affirmed by the Circuit Court of Appeals, but upon a different line of reasoning, the court holding that Sec. 13 of the act in question was operative, but thought the other sections inoperative—a somewhat inconsistent conclusion. As their decision was put on other grounds, this part of the opinion might properly be considered as *obiter*.

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The United States having once determined by a legally authorized official that the petitioner was entitled to come into this country cannot now repudiate its own action to the petitioner's detriment, at least until the determination of its own tribunal has been

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The rule invoked here falls plainly within the well known principles of *res adjudicata.*

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original proceeding like this. The right to review does not carry with it a right to ignore. If the Government had taken steps to review the action of the Collector in any tribunal of competent jurisdiction, it would have presented the question which was examined in the Chung Shee case, viz., can the Government review the action and determination of the Collector?

It might be noted that the review of the Collector's decision in Chung Shee's case occurred before the passage of the Act of 1894, and it might be a serions question whether under that act the sole reviewing tribunal was not the Secretary of the Treasury.

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It can hardly be claimed that the proceeding before the Commissioner in the petitioner's case was in the nature of an appeal from the Collector's decision.

1st. Because there is no power conferred on the Commissioner to sit *as a court of review.* The Collector's decision can only be reviewed by *certiorari* to the appropriate appellate tribunal or by appeal to the Secretary of the Treasury.

2d. The record fails to show that there was any notice of appeal or writ of review of the Collector's action of any kind.

3d. If these proceedings were in the nature of a review, then the burden should have been on the party appealing to overcome the presumption in favor of the decision. But the Commissioner ruled that the burden was on the petitioner; that is, the respondent was required to establish the legality of the decision from which the other side had appealed. Such a ruling, if the proceedings were in the nature of an appeal, would have been absurd.

IV.

The ruling of the Commissioner that the burden of proof was cast upon the petitioner was erroneous.

Section 3 of the Act of 1892 purporting to create such a rule, relates only to those arrested under the provisions of that act and the Act of 1882 as amended in 1884.

That section is clearly a plain violation of the Constitution. The guarantees and protection of the Constitution are just as much for the benefit of an alien as for a citizen.

This precise question, whether the constitutional provisions would protect an alien Chinaman, was presented in the case of

Wong Wing vs. U. S. (163 U. S., 228-238), and this Court said :

> " These provisions are universal in their appli-
> " cation to all persons within the territorial juris-
> " diction, without regard to any difference of race,
> " of color or nationality, and the equal protection
> " of the laws is a pledge of equal laws."

See, also, Yick Wo vs. Hopkins, 118 U. S., 356.

In the recent case of U. S. vs. Wong Kim Ark (169 U. S., 649), this, at page 695, reiterated the principles laid down in the Yick Wo case *inter alia.*

> " The right of the petitioners, as affected by the
> " proceedings of which they complain, are not the
> " less because they are aliens and subjects of the
> " Emperor of China. The 14th amendment to the
> " constitution is not confined to the protection of
> " citizens. It says : ' Nor shall any state deprive
> " any person of life, liberty or property without
> " due process of law ; *nor deny to any person with-*
> " *in its jurisdiction the equal protection of its laws.*'

" These provisions are universal in their applica-
" tion to all persons within the territorial juris-
" diction, without regard to any differences of race,
" color or nationality, and the equal protection of
" the laws is a pledge of the protection of equal
" laws.

" It is accordingly enacted by § 1977 of the Re-
" vised Statutes that, 'All persons within the
" jurisdiction of the United States shall have the
" same right in every state and territory to make
" and enforce contracts, to sue, be parties, give
" *evidence, and to the full and equal benefit of all*
" *laws and proceedings for the security of persons*
" *or property as is enjoyed by white citizens*
" * * *."

At page 689, the Court further said :

" The Acts of Congress, known as the Chinese
" Exclusion Acts, the earliest of which was passed
" some fourteen years after the adoption of the
" Constitutional Amendment, cannot control its
" meaning or impair its effect, but must be con-
" strued and executed in subordination to its
" provisions."

It is very plain that the rule laid down by the Commissioner, that the burden was on the petitioners, would never have been applied to an American or to any European. It was a race discrimination, which did not afford equal rights under the law.

The meanest Chinese alien is entitled to the same rights under the Constitution as the most enlightened citizen of this country.

He is entitled to have the laws construed and enforced in his case with the same equality as a citizen.

The Fourteenth Amendment of the Coustitution specifically guarantees the equal protection of the laws.

It was expressly held that a statute which permitted a different rule of law in the case of an alien from that which citizens enjoyed were unconstitutional.

It is the fundamental principal of our law that every man shall be presumed innocent of any charge preferred against him until he shall be proved to be guilty, and a law which presumes that a man of a *particular race* is doing an unlawful act, from the mere fact of his nationality, without requiring any proof, is a violation of the constitutional guarantee of equal protection.

Sections 3 and 4 of the Act of 1892 must be read together, as they stand, a Chinaman, for no other reason than that he is a Chinaman, becomes liable to a judgment which exposes him, not only to deportation but to imprisonment, not only *without a trial*, but without *any proof being presented*, for, if he does not assume the burden of proof and establish his innocence, he is adjudged to be unlawfully within the country and to be deported. If, as in the present case, he had acquired property in this country, he is liable to lose it all by his forcible deportation.

It was on these grounds that the Supreme Court declared Section 4 to be unconstitutional.

Wong Wing vs. U. S., *supra*.

But, if we disregard Section 4 and consider it as having been expunged, the same criticism applies to Section 3.

The Act of 1892 expressly continues in force the pre-existing statutes. The Acts of 1882 and 1884 explain under what circumstances it is unlawful for a Chinaman to enter or remain in this country. Section 16 of Act of 1884 *makes every violation of these laws a misdemeanor punishable by fine and imprisonment.*

Section 3 of Laws of 1892, as we have seen, declares that any Chinaman arrested under that act or the previous acts shall be adjudged the violator of the laws (and so liable to fine and imprisonment), without

a trial, or any proof being presented against him, because unless he takes up the burden of proof he stands convicted by operation of law, so that this section accomplishes the very thing which is so sharply condemned in the Wong Wing case.

V.

That provision of the law (Sec. 2, Laws of 1893) that excludes Chinamen as witnesses and requires an applicant to prove his standing as a merchant by white witnesses only, is violative of the Constitution which guarantees equal rights and equal laws to all. It cannot be said that a man ls allowed equality under the law if because of his race or color he is confined to one kind of proof, while all the rest of mankind are unrestricted.

No law can stand which forbids a man from calling his own countrymen as witnesses; that is creating a new and a harsh rule of evidence and confining it to a single race as above.

VI.

It appears without contradiction that the petitioner had for some years prior to the summer of 1893 been lawfully domiciled in this county.

That during the summer of 1893, and prior to the passage of the Act of 1893 (which was passed in November, 1893), he applied for and obtained the certificate then required by law. While he was absent the

Act of 1893 was passed, which materially changed some of the requirements of the certificate of re-entry.

It was claimed by the Government that the certificate which had been issued to the petitioner, for the purpose of securing his re-admission, was not competent for that purpose, because it did not comply with the requirements of Sec. 2 of the Act of 1893.

It is respectfully submitted that when a Chinaman who returns to China with the intent of returning to this country is required by law to obtain a certificate in a prescribed form *before he departs* and then *after he has departed* a change is made, by law, in the form or contents of this certificate which, if enforced, would render his certificate already obtained void. In such a case, the regularity of the certificate must be determined by the requirement of law, as they existed when he departed. Any other rule would be a monstrous injustice. The United States says to him in effect "If you procure a certificate in the form which we now prescribe you may depart in peace and re-enter without molestation." The man accepts this assurance, procures the certificate and departs.

May the United States, now, after his departure prescribe an entirely new and different form of certificate, nullify his former one and repudiate its assurances.

(b) When the Government designates certain officials to countersign and visé a certificate it is the duty of such officials to see that the same is in proper form. How can a foreigner, not over-conversant with our language or our laws know whether the certificate is in proper form or not when the officials of the Government certify to its regularity ?

The Government having designated certain officials whose duty it was to ascertain the regularity of these certificates and visé them, should be held estopped by their visé, from afterward questioning their regularity.

The original certificate being practically unprintable will be submitted, pursuant to the stipulation contained in the record.

(c) The petitioner had for many years prior to 1893 been a merchant in Newark, N. J. When he visited China he was entitled to return without any certificate.

U. S. vs. Lau Ow Bew, 144 U. S., 47.

VI.

This whole system of statutes constitutes a most shameful mockery of justice. They were passed to favor the blind and bitter prejudices of a small section, and ought not to be stretched one iota beyond what their strict construction requires. They have become a disgrace to our nation, with its much-vaunted love of freedom and equality, and this shame ought not to be increased beyond the limit of absolute necessity.

VII.

THE ORDER APPEALED FROM IS WRONG AND SHOULD BE REVERSED.

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Attorney for Petitioner.